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August 2, 2005

Honorable Ron Jones, Chairman
Tennessee Regulatory Authority
ATTN: Sharla Dillon, Dockets
460 James Robertson Parkway
Nashville, TN 37243-5015

Re: Enforcement of Interconnection Agreement Between BellSouth
Telecommunications, Inc. and NuVox Communications, Inc.

Docket No. 04-00133

Dear Chairman Jones:

NuVox Communications, Inc. ("NuVox"), through its undersigned counsel, files the enclosed original and 13 copies of this cover letter and of the attached Temporary Restraining Order issued by the United States District Court for the Eastern District of Kentucky, Frankfort, in NuVox Communications, Inc. v. BellSouth Telecommunications, Inc., et al., Civil Action No. 05-41-KKC, on July 1, 2005 ("TRO"). On June 20, 2005, NuVox filed for injunctive relief from the Kentucky Public Service Commission's decision granting BellSouth's motion for summary judgment and permitting a limited audit of certain of NuVox's converted enhanced extended link ("EEL") circuits in Kentucky. See BellSouth Telecommunications, Inc. v. NuVox Communications, Inc., Kentucky Public Service Commission Case No. 2004-00295, Order (Apr. 15, 2005).

The court granted NuVox's motion for a temporary restraining order, thereby enjoining BellSouth from auditing any of the fifteen converted EEL circuits at issue. In granting NuVox's motion, the Court stated that "NuVox would suffer *substantial* harm without the issuance of a restraining order should NuVox ultimately prevail on its claims." TRO at 2.

Honorable Ron Jones, Chairman
August 2, 2005
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Please contact me if you have any questions regarding this filing

Respectfully submitted,



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Counsel to NuVox Communications, Inc

Certificate of Service

The undersigned hereby certifies that on this the 2nd day of August, 2005, a true and correct copy of the foregoing has been forwarded via electronic transmission to the following.

Guy Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201
guy.hicks@bellsouth.com


H. LaDon Baltimore

JUL - 1 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

AT FRANKFORT
LESLIE G WHITMER
CLERK U S DISTRICT COURT

CIVIL ACTION NO. 05-41-KKC

NUVOX COMMUNICATIONS, INC.,

PLAINTIFF

v

TEMPORARY RESTRAINING ORDER

BELLSOUTH TELECOMMUNICATIONS, INC ;
KENTUCKY PUBLIC SERVICE COMMISSION;
MARK DAVID GOSS, *in his official capacity*
as chairman of the Kentucky Commission, and
W. GREGORY COKER, *in his official*
capacity as Commissioner of the Kentucky Commission,

DEFENDANTS

This matter is before the Court on Plaintiff NuVox Communication, Inc.'s ("NuVox") Motion for Temporary Restraining Order and Preliminary Injunction [R. 3]. NuVox has moved pursuant to Fed. R. Civ. P. 65 to enjoin Defendant Kentucky Public Service Commission ("PSC") and its Defendant Commissioners, Mark David Goss and W. Gregory Coker, from enforcing the PSC's order granting Defendant BellSouth Telecommunications, Inc.'s ("BellSouth") motion for summary disposition in part in the action entitled *BellSouth Telecommunications, Inc v. NuVox Communications, Inc.*, Order, Case No. 2004-00295 (Apr. 15, 2005) ("PSC Order") and enjoining Defendant BellSouth from conducting an audit of NuVox's fifteen (15) converted enhanced extended loops ("EELs") or any other NuVox circuit located in Kentucky. NuVox noticed Defendants of its motions at the time of filing. The Court conducted a hearing on the motion for temporary restraining order with counsel representing all parties on June 28, 2005.

Having considered NuVox's Verified Complaint and the attachments thereto [R. 1], NuVox's Memorandum in Support of Plaintiff's Motion and the attachments thereto [R. 3], BellSouth's Memorandum in Opposition and the attachments thereto [R. 7], the Response in Opposition filed by the PSC and its Commissioners [R. 9], and the excellent arguments made by counsel at the hearing, the Court finds that while the parties desire a quick resolution of the issues raised given the nature of the dispute and its potential effect

on the local telephone service industry, those same reasons mandate that the Court take a reasonably cautious approach to the issues raised. However, the Court anticipates taking only a relatively short time to reach its decision and has established a briefing schedule for final resolution of the case in the June 28, 2005, hearing minute order filed at R. 16.

Because the Court believes the issues can be fully and thoroughly resolved in a reasonably quick time, the Court will hereby grant NuVox's request to temporarily restrain and enjoin Defendants PSC and its Commissioners from enforcing the PSC Order, and temporarily restrain and enjoin BellSouth from conducting or causing an independent auditor to audit any of NuVox's EELs located in Kentucky. While the Court cannot determine at this time whether one party has a greater likelihood of success than any other party, the Court finds that NuVox would suffer *substantial* harm without the issuance of a restraining order should NuVox ultimately prevail on the merits of its claims. On the other hand, BellSouth will not be *substantially* harmed by restraining them from conducting the audit for a reasonably short period. Should BellSouth prevail on the merits, it will be able to conduct its audit and seek the same amount of monetary damages should the audit reveal that the EELs in question are not being used for a significant amount of local exchange service. The Court also finds that the PSC and the Commissioners would not be substantially harmed by a temporary restraint on enforcement of the PSC Order. At this time the Court cannot determine whether the public interest weighs in favor of one party over another.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. As of June 28, 2005, Defendant Kentucky Public Service Commission and its Commissioners and all of their employees, assigns, servants, and representatives, attorneys and agents, as well as any and all persons in the active concert or participation with them, are hereby **TEMPORARILY ENJOINED AND RESTRAINED** from enforcing the order granting Defendant BellSouth Telecommunications, Inc.'s motion for summary disposition in part in the action entitled *BellSouth Telecommunications, Inc v NuVox Communications, Inc.*, Order, Case No. 2004-00295 (Apr. 15,

2005) ("PSC Order").

2. As of June 28, 2005, Defendant BellSouth Telecommunications, Inc., and all of its employees, assigns, servants, and representatives, attorneys and agents, as well as any and all persons in active concert or participation with it, are hereby **TEMPORARILY ENJOINED AND RESTRAINED** from conducting an audit of any NuVox converted EELs or other NuVox circuit located in Kentucky.
3. This Order shall expire upon the Court's decision on NuVox's motion for preliminary injunction, which the Court will consider according to the schedule set forth in the June 28, 2005, hearing minute order filed at R. 16.
4. As security for the issuance of this Order, Plaintiff NuVox is required to post a bond in the amount of \$250,000 for the payment of such costs and damages as may be incurred or suffered by the Defendant BellSouth if it is found to have been wrongfully restrained.

ENTERED this the 1st day of July, 2005.



Signed By:

Karen K. Caldwell *KKC*

United States District Judge